

ESTTA Tracking number: **ESTTA10448**

Filing date: **06/21/2004**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Kellogg North America Company
Granted to Date of previous extension	06/20/2004
Address	Kellogg North America Company One Kellogg Square Battle Creek, MI 49016 UNITED STATES

Correspondence information	David Herdman Corporate Counsel Kellogg North America Company One Kellogg Square Battle Creek, MI 49016 UNITED STATES david.herdman@kellogg.com Phone:(269) 961-2170
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Applicant Information

Application No	76517339	Publication date	12/23/2003
Opposition Filing Date	06/21/2004	Opposition Period Ends	06/20/2004
Applicant	Azari Fruit Products, LLC.		

Goods/Services Affected by Opposition

Class 029. First Use: 20020801 First Use In Commerce: 20030113
All goods and services in the class are opposed, namely: Fruit leather

Attachments	Froodles.pdf (4 pages)
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Signature	/David Herdman/
Name	David Herdman
Date	06/21/2004

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re the Application of:

Azari Fruit Products, LLC.

Application Serial No.: 76/517,339

Filed: May 28, 2003

Mark: FROODLES A HEALTHY, FRUITFUL NOODLEY SNACK & Design

Published in the Official Gazette

Of December 23, 2003,

Kellogg North America Company

v.

AZARI FRUIT PRODUCTS, LLC. ,

NOTICE OF OPPOSITION

Kellogg North America Company, a corporation duly organized and existing under the laws of the State of Delaware, located and doing business at One Kellogg Square, P.O. Box 3599 Battle Creek, MI 49016 (hereinafter "Opposer"), believing that it will be damaged by registration, hereby opposes the above-identified application.

The grounds are as follows:

1. Commencing long prior to Applicant's filing date, Opposer and Opposer's predecessor in interest have engaged and are now engaged in the manufacture, distribution, sale, advertising and promotion in interstate commerce of food products and promotional and licensed food and non-food products, such as recipes, apparel, fruit snacks, housewares, children's books, paper goods, toys and games.

2. Opposer is owner of, and will rely herein upon, the following Federal Trademark registrations: 786,518 for FROOT LOOPS (issued March 9, 1965); 1,536,599 for FROOT LOOPS (issued April 25, 1989); 2,716,147 (issued May 13, 2003) for FROOT LOOPS; 2,134,904 for SPOOKY FROOT LOOPS (issued February 3, 1998)

and 2,375,944 for MARSHMALLOW BLASTED FROOT LOOPS (issued August 8, 2000). Registration of Opposer's marks is valid, subsisting and conclusive evidence of Opposer's exclusive right to use Opposer's marks in commerce on the goods specified in said registrations.

3. In addition to the registered marks specified above, Opposer shall rely herein upon its common law usage of its FROOT LOOPS marks for various other promotional and licensed products and services. Together with the registered marks noted above, these common law rights form a valuable family of marks known collectively as Opposer's FROOT LOOPS marks.

4. Commencing long prior to Applicant's filing date, Opposer and Opposer's predecessor in interest have used and are now using Opposer's FROOT LOOPS marks (hereinafter sometimes referred to as Opposer's Marks) in connection with said promotional and licensed products distributed and sold by Opposer and its licensees in commerce, including apparel, fruit snacks, housewares, children's books, paper goods, toys and games. Given the extensive favorable public recognition of Opposer's marks and the widespread and diverse nature of Opposer's and Opposer's predecessor in interest's promotional uses, use on these other products is a natural extension of Opposer's earlier usage on its fruit flavored, cereal-based food products.

5. Opposer and Opposer's predecessor in interest have made very substantial investments in advertising and promoting their goods and services under Opposer's marks since their initial use in the early 1960's. Opposer and Opposer's predecessor in interest have extensively used, advertised, promoted and offered Opposer's goods and services bearing Opposer's marks to the public through various channels of trade in commerce, with the result that Opposer's customers and the public in general have come to know and recognize Opposer's marks and associate the same exclusively with Opposer and/or the goods sold or provided by Opposer and/or its controlled licensees.

Further, Opposer's marks are believed to have become famous within the meaning of Section 43(c)(1) of the Trademark Act, as amended January 16, 1996.

6. Upon information and belief, notwithstanding Opposer's rights in and to Opposer's FROOT LOOPS marks, on May 28, 2003, Applicant filed an application for registration of the alleged mark FROODLES A HEALTHY, FRUITFUL NOODLEY SNACK & Design, wherein the word FROODLES visually dominates the entire mark and the other wording is written in a small semicircle underneath the large word FROODLES, for "fruit leather" in International Class 29 (hereinafter, the alleged FROODLES mark). Said application was assigned Serial No. 76/517,339, and was published for Opposition in the Official Gazette of December 23, 2003.

7. Applicant's alleged FROODLES mark, when viewed in the manner that it is likely to be perceived by consumers, so resembles Opposer's well-known FROOT LOOPS marks as to be likely, when applied to the claimed goods of Applicant, to cause confusion or mistake or to deceive purchasers resulting in damage and detriment of Opposer and its reputation.

8. Opposer, upon information and belief, avers that its customers, and the public in general, are likely to be confused, mistaken or deceived as to the origin, sponsorship or approval of Applicant's goods marketed under Applicant's alleged FROODLES mark and misled into believing that such goods emanate from, are licensed by or are in some way directly or indirectly associated with Opposer, to the damage and detriment of Opposer and its reputation.

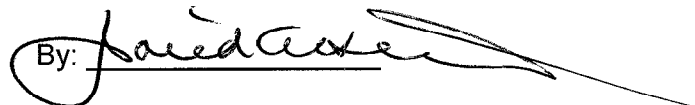
9. Opposer, upon information and belief, avers that it will be damaged by the registration by Applicant of the alleged FROODLES mark, as set forth in Applicant's Trademark Application Serial No. 76/517,339, in that the alleged mark is substantially similar to Opposer's marks and common law rights and, in the absence of any limitation

in its identification of goods, will be used in connection with directly competing or closely related goods offered to the public by Opposer and/or its controlled licensees.

10. Opposer, upon information and belief, also avers that it will be damaged by the registration by Applicant of the alleged FROODLES mark, as set forth in Applicant's Trademark Application Serial No. 76/517,339, in that the alleged mark will dilute the distinctiveness of Opposer's famous FROOT LOOPS mark within the meaning of the provisions of the Federal Trademark Dilution Act of 1995.

Wherefore, this Opposer, Kellogg North America Company, believes and avers that it is being and will continue to be damaged by registration of the alleged FROODLES mark as aforesaid, and prays that said Application Serial No. 76/517,339 be rejected in accordance with the provisions of Sections 2(d), 13 and 43 of the Trademark Act, that no registration be issued thereon to Applicant, and that this Opposition be sustained in favor of Opposer.

Respectfully Submitted,
KELLOGG NORTH AMERICA COMPANY

By: 

David Herdman
Corporate Counsel
Kellogg North American Company
One Kellogg Square
P.O. Box 3599
Battle Creek, MI 49016

Date: June 21, 2004